PATENT

Atty Docket No.: 200209305-1
App. Ser. No.: 10/666,621

REMARKS

Favorable reconsideration of this application is respectfully requested in view of amendments above and the following remarks. Claims 1-16 and 23-27 are pending in the present application of which claims 1, 9, and 23 are independent. Claims 17-22 were not elected and are canceled herein. Claims 26-27 are new.

Claims 1-3, 5, 9-14 and 23-25 were rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Lu et al. (6,980,524).

Claim 4 was rejected under 35 U.S.C. §103(a) as being unpatentable over Lu et al. (6,980,524) in view of the Paper entitled "Building Low-maintenance Expressways for P2P Systems", by Xu et al.

Allowable Subject Matter

The Examiner is thanked for indicating dependent claims 6-8 and 15-16 include allowable subject matter.

Drawings

The Office Action did not indicate whether the formal drawings filed with the application are accepted. Indication of acceptance of the drawings is requested.

IDS

The Examiner is thanked for indicating all the references in the IDS filed 1/29/04 were considered.

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Claim Rejection Under 35 U.S.C. §102

The test for determining if a reference anticipates a claim, for purposes of a rejection under 35 U.S.C. § 102, is whether the reference discloses all the elements of the claimed combination, or the mechanical equivalents thereof functioning in substantially the same way to produce substantially the same results. As noted by the Court of Appeals for the Federal Circuit in *Lindemann Maschinenfabrick GmbH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984), in evaluating the sufficiency of an anticipation rejection under 35 U.S.C. § 102, the Court stated:

> Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.

Therefore, if the cited reference does not disclose each and every element of the claimed invention, then the cited reference fails to anticipate the claimed invention and, thus, the claimed invention is distinguishable over the cited reference.

Claims 1-3, 5, 9-14 and 23-25 were rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Lu et al. (6,980,524).

Independent claim 1 recites,

> identifying a routing node in the region of the overlay network based on the searching through the map, wherein the routing node is a node in the region physically closest to the first node in the physical network relative to other nodes in the region.

Lu fails to teach identifying a routing node that is physically closest to the first node relative to other nodes in the region based on the search through the map. The rejection fails to identify with specificity what features of Lu are being relied upon as a teaching of each claimed feature. It is unclear what teachings of Lu are supposedly the claimed first proximity

information, map, region, and physically closest node relative to other nodes in the region. The Examiner is requested to indicate which features of the prior art are being relied upon, so Applicants have a fair opportunity to respond.

The Examiner cites to column 8, lines 31-60 as allegedly teaching all the features of claim 1. This passage of Lu simply describes two levels of network topology, which are node level and zone level. It also describes physical communication links between nodes and virtual communication links between zones. Neither this passage nor any other disclosure in Lu teaches identifying a routing node that is physically closest to the first node relative to other nodes in the region based on the search through the map.

In column 9, line 35-column 10, line 45, Lu discloses a node determines its GPS coordinates, and these coordinates are used to determine its zone. The node broadcasts a link request to identify other nodes within its zone and to identify nodes in neighbor zones that the node can communicate with. See column 10, lines 3-15. Thus, the node determines nodes that it is connected with, which are referred to as the "connected neighbors" in the same zone and neighbor zones. However, the node does not identify which connected neighbors are physically closest to the node. Thus, Lu fails to teach identifying a routing node that is physically closest to the first node relative to other nodes in the region based on the search through the map. Instead, Lu only discloses determining which nodes are connected, but does not determine which node is closest.

Dependent claim 2 recites,

> comparing proximity information in the map associated with a plurality of nodes in the overlay network to the first proximity information to identify the node in the region physically closest to the first node in the physical network.

Lu fails to teach identifying a physically closest node to the first node by comparing proximity information in the map to proximity information for the first node. In Lu, no proximity information comparison is performed. Also, no identification of a physically closes node is made.

Independent claim 9 recites, "identifying a subset of nodes in the target region closest to the first node in the physical network based on the searching through the map." Lu fails to teach identifying a subset of closest nodes.

Dependent claim 10 recites,

> determining distances from the source node to the subset of nodes; and selecting from the subset of nodes a node closest to the source node in the physical network based on the determined distances.

Lu fails to teach determining distances between nodes, and hence, fails to teach selecting a subset of closest nodes based on determined distances.

Independent claim 23 recites,

> means for identifying a routing node in the region of the overlay network based on the searching through the map, wherein the routing node is a node in the region physically closest to the node relative to other nodes in the region.

Lu fails to teach these features for the reasons stated with respect to claim 1.

For at least these reasons claims 1-16 and 23-25 are believed to be allowable.

Claim Rejections Under 35 U.S.C. §103(a)

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in *KSR International Co. v. Teleflex Inc.*, 550 U.S._, 82 USPQ2d 1385 (2007):

> "Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented." Quoting *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966).

As set forth in MPEP 2143.03, to ascertain the differences between the prior art and the claims at issue, "[a]ll claim limitations must be considered" because "all words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385. According to the Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in view of *KSR International Co. v. Teleflex Inc.*, Federal Register, Vol. 72, No. 195, 57526, 57529 (October 10, 2007), once the *Graham* factual inquiries are resolved, there must be a determination of whether the claimed invention would have been obvious to one of ordinary skill in the art based on any one of the following proper rationales:

> (A) Combining prior art elements according to known methods to yield predictable results; (B) Simple substitution of one known element for another to obtain predictable results; (C) Use of known technique to improve similar devices (methods, or products) in the same way; (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results; (E) "Obvious to try"—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success; (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art; (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention. *KSR International Co. v. Teleflex Inc.*, 550 U.S._, 82 USPQ2d 1385 (2007).

Furthermore, as set forth in *KSR International Co. v. Teleflex Inc.*, quoting from *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006), "[R]ejections on obviousness grounds cannot be

sustained by mere conclusory statements; instead, there must be some articulated reasonings with some rational underpinning to support the legal conclusion of obviousness."

Therefore, if the above-identified criteria and rationales are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

Claim 4 was rejected under 35 U.S.C. §103(a) as being unpatentable over Lu et al. (6,980,524) in view of the Paper entitled "Building Low-maintenance Expressways for P2P Systems", by Xu et al.

Claim 4 is believed to be allowable at least for the reason claim 1 is believed to be allowable.

New Claims

Claims 26 and 27 are new and are dependent on claim 1 and are directed to the controlled placement of proximity information in the overlay network, such as described on page 11, lines 14-21 and with respect to the method 400 shown in figure 4 of the Applicants' specification. The features of these claims are believed not to be taught or suggested by the prior art.

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Conclusion

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 08-2025.

Respectfully submitted,

Dated: October 23, 2008 By

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